

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SCOTT DOLLAR

v.

**BUCHANAN HAULING & RIGGING,
INC.**

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**CIVIL ACTION NO. 4:22-cv-732
JURY DEMAND**

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **BUCHANAN HAULING & RIGGING, INC.**, Defendant in the above matter, and files this Notice of Removal under 28 U.S.C. §§ 1441 and 1332(a).

**I.
BACKGROUND**

1. Plaintiff sued **BUCHANAN HAULING & RIGGING, INC.** in the 442ND District Court of Denton County, Texas, Cause No. 471-03130-2021, alleging the negligence of Defendant **BUCHANAN HAULING & RIGGING, INC.** and **BUCHANAN LOGISTICS, INC.**

2. Defendant **BUCHANAN HAULING & RIGGING, INC.** was served on or about July 28, 2022. Defendant has filed this Notice of Removal within the time period required. 28 U.S.C. §1446(b).

3. Plaintiff Scott Dollar filed a Notice of Partial Nonsuit dismissing all allegations against, **BUCHANAN LOGISTICS, INC.** leaving only **BUCHANAN HAULING & RIGGING, INC.** as the only remaining defendant.

4. Plaintiff Scott Dollar is a resident of Texas.

4. Defendant **BUCHANAN HAULING & RIGGING, INC.** is incorporated in the State of Indiana with its principal place of business in Michigan.

5. Plaintiff's Original Petition, filed contemporaneously herewith, seeks monetary relief in an amount over \$75,000.

II. BASIS FOR REMOVAL

6. Removal is proper under 28 U.S.C. § 1332(a) because Plaintiff's suit is a civil action in which this Court has original jurisdiction over the parties, based upon diversity jurisdiction under 28 U.S.C. § 1332. This action is removable to this Court pursuant to the provisions of 28 U.S.C. §1441(b) because Plaintiff is a citizen of the State of Texas, and Defendant Buchanan Hauling & Rigging, Inc. is an Indiana corporation with its principal place of business in Indiana.

7. As noted above, Plaintiff is, and was at the time this lawsuit was filed, a resident of the State of Texas. *See* Plaintiff's Original Petition, Paragraph 2. On information and belief, Plaintiff intends to continue residing in Texas and is thus domiciled in Texas. *See Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011) (evidence of a person's place of residence is prima facie proof of his state of domicile, which presumptively continues unless rebutted with sufficient evidence of change).

8. For diversity purposes, a person is considered a citizen of the state where that person is domiciled. Additionally, for diversity purposes, a corporation is a citizen of both the state in which it was incorporated and the state in which it has its principal place of business. 28 U.S.C. §1332(c)(1). For Defendant, this test implicates the State of Indiana.

9. Because the Plaintiff and the Defendant to this suit do not share citizenship in any state, removal is proper on diversity grounds.

10. Accordingly, because this notice of removal has been filed within thirty days after the receipt of a copy of the initial pleading setting forth the claim for relief, this removal is proper and timely under 28 U.S.C. §1446(b).

11. Further, as set forth in Plaintiff's Original Petition, filed with these pleadings here today, the amount in controversy in this action exceeds, exclusive of interest and costs, the sum of \$75,000. Thus, the amount in controversy meets the threshold for removal.

12. The United States District Court for the Eastern District of Texas, Sherman Division, embraces Denton County, Texas, the place where the state court action was filed and is pending. This statement is not meant as a waiver of any argument that venue is improper in the location in which the state court action was filed, but merely demonstrates the propriety of removing the action to this federal judicial district.

13. All pleadings, process, orders, served upon Defendant or issued by the state court are attached to this Notice as Exhibit "A" as required by 28 U.S.C. § 1446(a). No other motions are pending before the state court.

14. Defendant will promptly file a copy of this Notice with the clerk of the state court in which the action is pending.

III. REQUEST FOR JURY TRIAL

22. Defendant hereby demands a trial by jury in accordance with the provisions of FED. R. CIV. P. 38.

WHEREFORE, PREMISES CONSIDERED, **BUCHANAN HAULING & RIGGING, INC.**, as party in diversity with the Plaintiff, respectfully request that this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court

for the Eastern District of Texas, Sherman Division, and for such other and further relief to which it may show itself to be justly entitled in equity or law.

Respectfully submitted,

FEE, SMITH & SHARP, LLP

/s/ Michael P. Sharp

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ATTORNEYS FOR DEFENDANT

BUCHANAN HAULING & RIGGING, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 25, 2022, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Eastern District of Texas – Sherman Division, using the electronic case filing system of the Court. The electronic filing system sent a “Notice of Electronic Filing” to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means as follows:

Via E-Service

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/s/ Michael P. Sharp

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